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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/672,898 | 09/29/2000 | Juha Romppanen | 197935US6 | 8825 |

22850 7590 03/09/2004

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1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER

THOMSON, MICHELLE R

ART UNIT PAPER NUMBER

3641

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/672,898

Applicant(s)

ROMPPANEN, JUHA

Examiner

Michelle (Shelley) Thomson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-26 is/are allowed.
- 6) ☒ Claim(s) 6 is/are rejected.
- 7) ☒ Claim(s) 7-15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 11/24/03 have been fully considered but they are not persuasive. Applicant's arguments that the amendment to claim 6 clarifies the difference between claim 6 and the applied art, is not persuasive. It has been held that the recitation that an element is "configured to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. The plurality of cloth shot bags of Mangolds in view of Miller would be capable of striking a target when the cartridge is fired. The rejection stands.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mangolds (WO98/54538) and Miller (US Patent # 4,154,012). Mangolds discloses a non-killing cartridge (reference 15) to be fired by a firearm (within a barrel) and packed in a shell (reference 12). The device includes a plurality of weights (references 18-32), which may be of a bean bag type structure (page 7, lines 21 and 22) connected to each other. Bean bag type structures are known to be cloth bags normally filled with small cylindrical particles. Although Mangolds does not expressly disclose the bean bag type structures filled with metal shot, Miller does. Miller teaches that cloth bags filled with shot are known for riot control of non-lethal type (column 1, lines 11-

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13). Therefore, to modify the Mangolds device to specify the use of metal shot within the bean bags would have been considered an obvious modification to those skilled in the art at the time the present invention was made, particularly since Miller shows the known use of bean bag type structures filled with metal shot for various purposes and metal shot would therefore just be another alternative filler material for the bean bags of the Mangolds device.

Allowable Subject Matter

4. Claims 7-15 are objected to as being dependent upon a rejected base claim, but would possibly be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Claims 16-26 are allowed.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

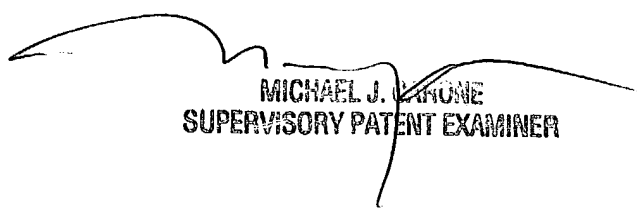
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Thomson whose telephone number is 703.306.4176. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703.306.4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mrt



MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER